



December 23, 2022

Ms. Vanessa A. Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

**Re: Request for Comment on Outsourcing by Investment Advisers [Release No. IA-6176;  
File No. S7-25-22; 87 FR 68816]**

Dear Ms. Countryman:

The Index Industry Association (IIA or we) appreciates the opportunity to share our views on the U.S. Securities and Exchange Commission’s (Commission) request for comment on “Outsourcing by Investment Advisers” (Release), which seeks input on whether the Commission should prohibit registered investment advisers from outsourcing certain services or functions (Covered Functions) unless meeting minimum due diligence, monitoring and recordkeeping requirements under proposed rule 206(4)-11 (Proposed Rule) of the Investment Advisers Act of 1940 (Advisers Act) and amend Form ADV, the investment adviser registration form, to collect certain census-type information about their service providers.

The IIA was founded in 2012 as a not-for-profit organization composed of independent index providers from around the world. Many of the leading independent index providers are members of the IIA, including Bloomberg Index Services Limited, Cboe Global Indices, the Center for Research in Security Prices, China Central Depository and Clearing (China Bond Pricing), China Securities Index Co. Ltd., FTSE Russell, Hang Seng Indices, ICE Data Indices, JPXI (Tokyo Stock Exchange), Morningstar, MSCI Inc., Nasdaq OMX, Parameta Solutions, Shenzhen Securities Information Co Ltd., S&P Dow Jones Indices and STOXX Qontigo.

The IIA’s mandate is to educate investors on the attributes and role of indices within the investment process; to advocate for the interests of both index users and providers worldwide; and to work with regulators and other representative bodies to promote competition and push for industry standards of best practice, independence and transparency. As independent index providers, IIA’s members do not trade the underlying component securities in their indices or issue investable financial products that track or use indices.<sup>1</sup> This independence model prevents the real and perceived conflicts of interest that may arise in certain index providers that do not separate such business functions.

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<sup>1</sup> We note that some IIA members are affiliated with exchanges which may be trading venues for an index’s underlying component securities or for index-linked investment products, or to which indices are licensed for use in the development of derivative investment products.

Though the IIA appreciates, and shares, the Commission's desire to protect investors, the IIA is concerned about the Commission's justification in the Release for why index providers would fall under the scope of the Proposed Rule. Specifically, the IIA strongly disagrees with the Commission's characterization of bespoke<sup>2</sup> index providers as providing investment advisory services.

Additionally, the IIA urges the Commission to both clarify and narrow the scope of the Proposed Rule, as the Release seems to justify allowing the scope of the Proposed Rule to reach beyond service providers providing investment advisory services, to index providers whose clients use indices "to inform...investment decisions as part of [their] advisory services."<sup>3</sup> The Proposed Rule also applies a negligence standard of liability to service providers under prong (2) of Covered Function, defined *infra*, which could either trickle down contractually to index providers, resulting in the Commission indirectly imposing contractual terms and liability on third parties not subject to its jurisdiction, or cause registered investment advisers to be responsible for the gap. Some registered investment advisers may even demand that service providers wholly indemnify the registered investment adviser should it fail to uphold the requirements of the Proposed Rule, effectively imposing the Proposed Rule's strict liability for non-compliance on service providers.

The Proposed Rule would impose high compliance costs that investors will ultimately have to cover. Risk-averse registered investment advisers will likely err on the side of caution and choose to apply the due diligence requirements to as many functions as possible to mitigate regulatory risk at the expense of investors. Such registered investment advisers may also ask service providers to provide more information than what may be required by the Proposed Rule, which would prevent service providers from being able to efficiently respond to multiple due diligence inquiries. The Proposed Rule would impose further additional compliance costs for index providers that operate under multiple jurisdictions, who will have to figure out whether the coordination required between index providers and registered investment advisers pursuant to the Proposed Rule compromises the index provider's independence obligations under applicable benchmark regulations or the IOSCO Principles.<sup>4</sup> The associated increase in operational expenses for both registered investment advisers and service providers will ultimately be passed on to the investor.

However, the Proposed Rule does not provide investors with any direct benefit that would justify the increased cost of compliance. The Commission has not identified any specific policy reason or ongoing harm to investors that would suggest that the current review process of service providers, conducted by registered investment advisers and fund boards, is lacking, or that such entities, who are already subject to the fiduciary standard under the Adviser's Act, require additional Commission oversight in the form of new due diligence and monitoring requirements.

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<sup>2</sup> Though this comment letter uses the term "bespoke" to describe certain indices, to conform to the Commission's use of the term in the Release, we note that such indices can also be referred to as "custom," as referenced in our response to the Commission's Request for Comment on Certain Information Providers Acting as Investment Advisers. *See infra* note 6.

<sup>3</sup> Outsourcing by Investment Advisers, 87 Fed. Reg. 68816, 68821 (Nov. 16, 2022) (Release).

<sup>4</sup> The IOSCO Principles are available at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf>.

Instead, the Proposed Rule may incentivize registered investment advisers to not outsource their indexing needs and establish an internal index provider. Additionally, though the Proposed Rule does not make a distinction between independent third-party providers and affiliated service providers,<sup>5</sup> there may still be incentives for asset managers to bring indexing functions “in house” for ease of administration and cost-savings reasons, consequently leading to an unintentional increase in affiliate indices and increased investor exposure to principal-agent risk and other conflicts of interest that independent index providers help guard against. Such a development could also have a material adverse impact on the value-creation role independent index providers provide to the overall economy, including investors.

To protect against such outcomes, and to promote the use of independent index providers for the benefit of investors, the IIA urges the Commission to provide a safe harbor for independent index providers that are committed to the IOSCO Principles from the due diligence and oversight requirements in the Proposed Rule except in certain extenuating circumstances (*e.g.*, a registered fund adviser or a fund board becomes aware of a significant control failure that the registered investment adviser or fund board believes warrants further investigation).

#### **I. The Proposed Rule Mischaracterizes The Service Provided By Bespoke Index Providers.**

Index providers typically provide services related to (1) conceptualizing the rules that will determine the components of the index and how the index will be maintained, (2) calculating the index values in accordance with the rules established for the index, and (3) publishing or otherwise disseminating the values of the index.

The term “index” is not defined in the Release or in the federal securities laws generally. The IIA’s official definition of an index is “a number calculated by reference to a theoretical collection of assets, market indicators, securities or derivatives whose absolute level or periodic difference relate to the performance of the theoretical collection over that period.” In less technical terms, an index measures the performance, or some other characteristic, of a list of instruments (*e.g.*, bonds, stocks, commodities, derivatives) that are selected and weighted according to an employed methodology that describes a set of rules governing the construction of the index.

When constructing or rebalancing an index, the index provider does not make any judgment as to the merit of an investment in the index components. Rather, it is a mechanical process where all of the securities that satisfy the pre-established rules for the index are included, regardless of their investment merits. If indices were created or maintained as the index provider or another actor wished, as opposed to in accordance with specified rules and methodologies, an index may present inaccurate or inconsistent information, which would ultimately undermine investors’ ability to make informed decisions, as well as the index’s, and the index provider’s, market credibility. Index providers do not hold themselves out to the public as an investment adviser or as one who provides

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<sup>5</sup> See Release, *supra* note 3, at 68823 (stating “the [Proposed Rule] does not...make a distinction between third-party providers and affiliated service providers...”).

investment advice, do not receive any separate or additional compensation that represents a clearly definable charge for providing advice about securities, or provide specific investment advice.<sup>6</sup> In fact, index providers typically disclaim any investment advisory responsibility in connection with publishing and licensing its indices.

In the Release, the Commission observes that many registered investment advisers “have engaged service providers to perform activities that form a central part of their advisory services,” and provides, as one example, the engagement of “index providers to develop bespoke [indices] that an adviser may replicate or track in portfolios for its clients.”<sup>7</sup> The Commission believes that the characterization of bespoke index providers as providing a “central” investment advisory service is justified because a bespoke index indicates that the registered investment adviser chose “to engage [the] index provider for the purposes of developing an investment strategy for its clients” or to “formulat[e] the [registered investment] adviser’s investment advice.”<sup>8</sup> The IIA strongly disagrees with this characterization.

Certain index providers create and operate bespoke indices according to specific clients’ needs. However, the Release inaccurately assumes that such service is an investment advisory service simply because bespoke indices may be designed at the direction of, or with input from, a registered investment adviser.<sup>9</sup> Operationally speaking, bespoke indices are not materially different from, or present greater risks to investors than, other, broader indices; they operate in accordance with the same rules-based principles that govern broader indices. As such, at no stage of the creation, maintenance or licensing of a bespoke index does the index provider provide any form of personalized advice or recommendation to the registered investment adviser or the investment company, or their clients. Additionally, any input or request from the registered investment adviser, as well as any change that is implemented, would be reflected in the index methodology and implemented in accordance with that methodology. The index provider typically

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<sup>6</sup> For these and other reasons (*e.g.*, index providers also do not manage assets; report “assets under management”; or recommend or advise on asset allocations, investment products or investment strategies), none of the IIA’s members hold the position that they, as independent index providers, are investment advisers under the Advisers Act. We are unaware of any independent index provider that operates as a registered investment adviser.

Should the Commission disagree with the provided analysis and designate index providers as investment advisers, index providers are able to rely on the Publisher’s Exclusion set forth in Section 202(a)(11)(D) of the Advisers Act, as interpreted by the Supreme Court in *Lowe v. SEC*. Please see our response to the Commission’s Request for Comment on Certain Information Providers Acting as Investment Advisers (Release No. IA-6050; File No. S7-18-22; 87 Fed. Reg. 37254) for more information, available at: <https://www.sec.gov/comments/s7-18-22/s71822-20136261-307301.pdf>.

<sup>7</sup> Release, *supra* note 3, at 68817.

<sup>8</sup> *Id.* at 68822.

<sup>9</sup> For example, active fund managers with widely diversified portfolios found that comparisons to even an extremely broad equity index or fixed-income index may be misleading to investors because the performance characteristics of the various asset classes in their portfolio may have been purposefully selected so that they do not correlate with each other, or due to the fact that the broad index may violate one or more of their investment policy guidelines (*e.g.*, limits on individual exposures). To address this growing market need, index providers began to produce bespoke indices, such as by blending together existing indices from two or more asset classes or by imposing exposure caps, that could more accurately measure the performance of certain actively managed portfolios.

provides written notices to the licensees of a bespoke index clearly stating its limited role, including that it does not provide any investment advice. In fact, many index providers require the licensees of bespoke indices to provide these notices to their clients if they are registered investment advisers.

Regardless of whether an index is bespoke or broad, it is ultimately the responsibility of the registered investment adviser, not the index provider, to determine the index's role in its investment strategy. Registered investment advisers can utilize the same index in different ways.<sup>10</sup> However, in each case, it is the registered investment adviser, not the index provider, that controls all aspects of investment strategy development, even for investment strategies that utilize an index. Index providers are completely agnostic as to the approaches taken by a licensee when incorporating an index into an investment strategy.

## **II. The Definition of “Covered Function” Is Overly Broad And Prescriptive.**

The Proposed Rule applies to Covered Functions, which are defined as “(1) a function or service that is necessary for the adviser to provide its investment advisory services in compliance with the Federal securities laws, and (2) that, if not performed or performed negligently, would be reasonably likely to cause a material negative impact on the adviser's clients or on the adviser's ability to provide investment advisory services.”<sup>11</sup> The overly broad and vague definition of Covered Function allows the Proposed Rule to apply to index providers, even though they, as explained above, do not provide investment advisory services when creating or operating indices, including bespoke indices, and therefore neither owe fiduciary duties to registered investment advisers nor take on their fiduciary duties to their clients.

Consequently, index providers that do not provide investment advisory services but whose indexing services are used to inform a registered investment adviser's investment decisions, seemingly even in situations where the registered investment adviser had no influence over the creation or operation of an index,<sup>12</sup> fall under the scope of the Proposed Rule and, therefore, the

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<sup>10</sup> For example, a registered investment adviser may license an index to use as a model for an index mutual fund or ETF, or any other financial product that tracks a given market. Some registered investment advisers may choose to replicate the index in its entirety, while others may try to track the performance of the index through a proprietary blend of derivative instruments. Certain registered investment advisers may choose to track the performance of the index by holding only a representative sample of the index's underlying instruments. Others may choose to impose a separate investment screen on top of a licensed index, to abide by their particular investment strategy. Still others may develop products that contain a hedge against a decline in the value of the constituents of the index or provide a measure of inverse financial exposure to them.

A bespoke index could also have a variety of uses, even though it has fewer (or even one) licensee. The registered investment adviser may determine to seek long exposure to some or all of the assets composing the bespoke index for one quarter and then switch to seek short positions the subsequent quarter. Relatedly, such registered investment adviser may change when and how it will use derivatives for exposure, leverage or cash management purposes.

<sup>11</sup> Release, *supra* note 3, at 68820.

<sup>12</sup> The Commission states in the Release that a bespoke index “created specifically for the [registered investment] adviser to follow would serve as a material service that is necessary for the [registered investment] adviser to provide investment advisory services to the extent the index is used by the [registered investment] adviser to provide investment advice and make investments on behalf of the advisory client.” Release at 68822. Further, if the creation

Commission's jurisdiction. The Commission never explains why the Release's justification for the Proposed Rule, as a continuation of a registered investment adviser's fiduciary obligations<sup>13</sup>, requires due diligence of index providers simply because a subset of their clients independently choose (*i.e.*, index providers, by design, have no control or influence over whether and how its clients use their indices) to use the market data generated from an index to inform investment decisions as part of its advisory services. Without a clear, full legal justification of how index providers provide investment advice,<sup>14</sup> which the Commission does not provide or refer to in this Release, the Proposed Rule seemingly asserts that the Commission's jurisdiction should reach index providers, even when they do not provide investment advice, by virtue of the fact that their service is utilized by a registered investment adviser for a purpose relating to that registered investment adviser's investment advice and may materially negatively impact such registered

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or operation of the bespoke index "is not performed or performed negligently, it would have a material negative impact on the [registered investment] adviser's ability to provide investment advisory services" because, should the bespoke index provider "fail[] to provide the index, the [registered investment] adviser would not be able to make investments for the client as needed." *Id.* As such, "if [a registered investment] adviser engaged an index provider to create or lease an index for the adviser to follow as a strategy for its advisory clients," the Commission believes "it would likely fall under both elements of the definition" of Covered Function, and therefore be subject to the Proposed Rule. *Id.*

Additionally, the Commission states in the Release that an index provider that "implement[s] an investment decision...including identifying which portfolios to include or exclude [or] determin[es] how to allocate a position among portfolios," may also fulfill prong (1) of the definition of Covered Function. Presumably, if the inclusion, exclusion, or allocation, if not performed or performed negligently, would be reasonably likely to cause a material negative impact on the registered investment adviser's clients or on the registered investment adviser's ability to provide investment advisory services, such action would be a Covered Function and the Proposed Rule would apply. *Id.* The Commission further implies in the Release that the Proposed Rule's scope also covers situations where a registered investment adviser "licenses a commonly available index," provided the registered investment adviser's "stated investment strategy involves management against that index," when the Commission stated that the "failure to receive [such an] index or an inaccurate delivery of [such] index could have a material negative impact on the [registered investment] adviser's ability to manage that portfolio," invoking prong (2) of the definition of Covered Function. *Id.*

In contrast, the Commission provides that when a registered investment adviser "purchases a license to utilize a commonly available index solely as a comparison benchmark for performance," then "that index provider would most likely not be providing a [Covered Function] because...the [registered investment] adviser is not using the index to provide investment advice." *Id.* Significantly, the distinguishing characteristic then, as the Commission notes, is whether the index is used "to inform the [registered investment] adviser's investment decisions as part of its advisory services" or simply "as a performance hurdle." *Id.* at 68822-23.

<sup>13</sup> The Release justifies the need for the Proposed Rule by contending that "when [a registered] investment adviser holds itself out to clients and potential clients as providing advisory services, the [registered investment] adviser implies that it remains responsible for the performance of those services and will act in the best interest of the client in doing so." Release at 68819. Specifically, the Commission states that a registered investment adviser "remains liable for its obligations, including under the Advisers Act, the other Federal securities laws and any contract entered into with the client, even if the [registered investment] adviser outsources functions" because the registered investment adviser "cannot waive its fiduciary duty." *Id.* The Commission contends that "as a fiduciary," the registered investment adviser "cannot just 'set it and forget it' when outsourcing." *Id.* Therefore, the Release justifies requiring the registered investment adviser to oversee the outsourced functions "to ensure the [registered investment] adviser's legal obligations are continuing to be met despite the [registered investment] adviser not performing those functions itself" and to prevent the undermining of "the [registered investment] adviser's provision of services and compliance with the Federal securities laws." *Id.*

<sup>14</sup> See *supra* note 6.

investment adviser under certain circumstances—a novel interpretation that the IIA believes directly contradicts longstanding federal securities law and rules, the accepted industry position, and established Congressional intent.

Currently, most contractual agreements for index data are subject to a “gross negligence” standard. Registered investment advisers will likely want to renegotiate their license contracts with index providers to contractually pass on the negligence standard of liability imposed in prong (2) of the definition of Covered Function.<sup>15</sup> Some registered investment advisers may even demand that service providers wholly indemnify the registered investment adviser should it fail to uphold the requirements of the Proposed Rule. In either case, the Proposed Rule results in the Commission indirectly imposing contractual terms and liability on third parties not subject to its jurisdiction.

### **III. The Proposed Rule Would Be Costly Without Providing Benefit.**

The Proposed Rule would likely impose significant compliance costs while not producing any direct benefits, and is thus undesirable and unnecessary from a policy perspective. The Commission has not identified any public policy concern or ongoing investor harm related to when and how registered investment advisers and fund boards (where applicable) currently conduct due diligence on index providers. The fiduciary duty of registered investment advisers, as required under the Advisers Act, already requires registered investment advisers to choose third party service providers carefully.<sup>16</sup> Accordingly, registered investment advisers already conduct due diligence on index providers (*e.g.*, an index provider’s index governance policy, error-handling policy, operations, business continuity plans, cyber security, business code of ethics and compliance framework), and already negotiate for the contractual terms that they judge to be most appropriate for their clients, pursuant to their fiduciary duty. Further, the Commission already has the authority to enforce a registered investment adviser’s fiduciary duties, including any failure to oversee service providers, under Section 206 of the Advisers Act.<sup>17</sup>

Additionally, many index providers adhere to the IOSCO Principles. The IOSCO Principles, which the Commission helped draft, establish policy guidance and principles for index-related activities that address conflicts of interest and promote good index design and robust transparency.<sup>18</sup> Some

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<sup>15</sup> Alternatively, though less likely, registered investment advisers may not contractually pass on the negligence standard of liability to index providers, meaning that they will now have to be responsible for the gap.

<sup>16</sup> Other complementary investor protections already exist as well. If an investment strategy involving an index is part of a fund’s fundamental policy, the Commission requires shareholders to approve of any changes to that policy, which would likely entail the fund board conducting due diligence on, and comparing, the current and new indices, and current and new index providers, as required by their fiduciary duty. *See* 17 C.F.R. § 270.35d-1. Even in situations where shareholders are not required to approve the change of a fund’s index by the Commission’s regulations, it is common for registered investment advisers to provide notice to the fund board when an index is being changed, who have the ability to require, at any time and for any reason, the registered investment adviser to conduct further due diligence on an index provider and report back to the fund board.

<sup>17</sup> *See* S.E.C. v. Capital Gain Research Bureau, 375 U.S. 180 (1963).

<sup>18</sup> For example, IOSCO Principle 3 requires index providers to adopt a conflicts of interest mitigation framework that should include measures to avoid, mitigate or disclose conflicts of interest that may exist between the index provider business and any other business of the index provider or its affiliates; to disclose conflicts of interest arising from the

IIA members provide public statements of adherence with detailed descriptions of their control frameworks to funds, asset managers and other users of their indices, with internal or external auditors often conducting assessments of the controls described in these statements. Further, each IIA member commits to adhering to the IIA's Best Practice Guidelines (Guidelines), which are available to the public, including non-member index providers.<sup>19</sup> The Proposed Rule does not address a new conflict or provide any additional benefit to investors relative to what is already provided by index providers by upholding the IOSCO Principles and/or the Guidelines.

Though the Proposed Rule does not produce any direct benefits, it would likely increase compliance costs significantly. Registered investment advisers are likely to err on the side of caution, particularly given the overly broad and vague definition of "Covered Function", and apply the due diligence requirements to as many functions as possible, thereby increasing compliance costs that will ultimately be covered by investors. Registered investment advisers may also ask service providers to provide more information than what may be required by the Proposed Rule, again as a cautionary measure. The different interpretations of the Proposed Rule and lack of appetite for regulatory risk by registered investment advisers will likely require service providers to individually respond to multiple due diligence demands, which would take a significant amount of time and tie up considerable resources. The Proposed Rule would impose further additional compliance costs for index providers that operate under multiple jurisdictions, who will have to figure out whether the coordination required between index providers and registered investment advisers pursuant to the Proposed Rule compromises the index provider's independence obligations under applicable benchmark regulations or the IOSCO Principles. These increases in operational expenses, incurred by both the registered investment adviser and the service provider, will ultimately be passed on to the investor, who likely did not receive any additional protection than under the current due diligence regime.

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ownership structure or control of an index provider to stakeholders and relevant regulatory authorities in a timely manner; and to protect the integrity and independence of benchmark determinations.

IOSCO Principle 4 requires index providers to implement, and periodically review and update, an appropriate control framework for the process of determining the index that addresses the extent of the use of discretion in the index setting process, as well as ensure the integrity and quality of the index determination process through various robust accountability measures.

IOSCO Principle 9 requires index providers to provide transparency around an index's determinations, including a published description that concisely explains the extent to which and the basis upon which discretion was used, where appropriate.

IOSCO Principle 11 requires index providers to document and publish, or make available, the methodology used to make an index, including the criteria and procedures used to develop the index, the mix of inputs used to derive the index, an explanation of how priority of certain data types is assigned, the minimum amount of data needed to determine the index, and the guidelines that control the exercise of any discretion used by the index provider.

IOSCO Principle 12 requires index providers to publish or make available the rationale of any proposed material change to an index methodology, as well as the procedures for instituting such change.

<sup>19</sup> The Guidelines are available at <https://www.indexindustry.org/iaa-best-practice-guidelines/>. They are a set of standards regarding an index provider's governance arrangements and management structure, data collection processes, index calculation and verification methodologies, publication timing, management of its conflicts of interest, business continuity and disaster recovery plans, recordkeeping and confidentiality policies, complaints process, and internal controls. The Guidelines were developed by the IIA in July 2013 and are regularly maintained.

As previously mentioned, given that most contractual agreements for index data are subject to a “gross negligence” standard, registered investment advisers will likely want to renegotiate their license contracts with index providers to contractually pass on the negligence standard of liability imposed by the Proposed Rule. The costs of these renegotiations likely will also be passed on to investors.

#### **IV. The Commission Should Consider Providing A Safe Harbor For Independent Index Providers.**

The IIA is concerned that the additional cost burdens imposed by the Proposed Rule could prevent registered investment advisers from realizing the benefits of outsourcing certain functions, including indexing services, to independent third parties. Such registered investment advisers may instead be incentivized by the Proposed Rule to maintain indexing services internally, though they may have less access to the requisite tools, resources or expertise. Though the Proposed Rule applies to both third party and affiliate index providers, there may still be incentives for asset managers to bring indexing functions “in house” for ease of administration and cost-savings reasons.

The consequent decrease in independence among index providers would increase investor exposure to principal-agent risk and other conflicts of interest that independent index providers help guard against. Such a development could also have a material adverse impact on the overall economy, including investors. Independent index providers play a key value-creation role in the overall economy. Independent index providers source and process high-quality pricing and trade data to transparently create and maintain indices in demand by various entities, including different kinds of market participants, from registered investment advisers to pensions to retail investors, and non-market entities, such as academics and researchers. By increasing access to market activity measurements, independent index providers have helped the public better understand and follow economic developments; increased the transparency and comparability of fund performance evaluations, by acting as benchmarks; and increased investor access to new, index-based investment vehicles and investible products, which not only provide investors with greater investment options but also lowers costs by increasing competition. These benefits will become significantly diminished if indices lose their independence and transparency due to asset managers bringing indexing functions “in house.”

An increase in affiliate index providers will likely also have financial consequences on fund boards, who will now need to conduct a separate, more detailed due diligence on affiliate index provider fees as part of their conflicts check. The large expense associated with such a review would ultimately be borne by investors.

To protect against such outcomes, and to promote the use of independent index providers for the benefit of investors, the Commission should consider a safe harbor for independent index providers that are committed to the IOSCO Principles from the due diligence and monitoring requirements of the Proposed Rule, except in certain extenuating circumstances (*e.g.*, the registered investment

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adviser or one of its clients, such as a fund board, becomes aware of a significant control failure that it believes warrants further investigation).

Thank you for your consideration of our response. We stand ready to discuss it further with Commission staff at your convenience.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Rick Redding".

Rick Redding  
Chief Executive Officer  
Index Industry Association